

THE  
SECOND EDITION

Of The

Vindication of the Dead!

Or, Six Hours Reflections upon the Six Weeks labour in Answering Mr. Ashton's Speech, published by Authority, with some Alterations.

**T**HE Case of Mr. Ashton was indeed so hard, and his Speech so handsome, that I don't wonder to see a Secretary's Command for printing an *evasive, trifling, and malicious Paper*, that endeavours to load his Person, and blast his Writing; but the subject will bear no more, and this Government stands in need of a defence, however I can't but wonder the late Answerer should expect to persuade the world it was not his, because he who professes himself an illiterate man, and unskill'd in the Law, uses the terms of *Impending, Pre-arranging, Premises and Consequences* (two of which are not terms of Art, none of the Law, and those other two that are Logical, made familiar to all those that have ever had any sort of Breeding, or Conversation) for all that is said of this nature, both, at the beginning and end of the Answer, will appear very impertinent to any one that reads his Trial, even as it is thought fit to be publish'd, where in some things have been Omitted, as well as others Amended, to make it fit for perusal; for in that he defends himself so

sensibly, that it provoked the L. Ch. Just. to Rage, and sufficiently proved himself capable to write such a Paper, whose natural Parts were so very strong and so well improved; and if he was so well satisfied that those that comply with, as well as those that support the Present Establishment are guilty of Perjury and pertake with Rebels, it very well became the charity of a dying Man to warn those he left behind him to repent; and if the words of dying Men have generally more weight, and make deeper Impressions, he did but his Duty to, recommend to those who survived him Amendment and Restitution.

2. As for those matters of Law he thought hard on his Trial; I believe he neither complained of, nor desired any thing but what the Lord Chief Justice Pollexfen, Sr. Francis Child, Mr. Herbert, and almost every man upon his Jury, as well as Tre-  
maine and all the other Council would have Censur'd or thought fit to be granted in any other Reign; but by this we see they have learnt to practice those methods of Trial which themselves former-

complained of, as Arbitrary and Illegal, and have borrowed Law from the Tories, while to make them amends they have taught them their Gospel. I must confess I know nothing could have seemed so warrant the Late extraordinary proceedings so well as a Reformation of our former ill Measures, and proved that that, and not private advantage, was the true motive of the Undertaking. It cannot be denied that we are poorer of late than formerly, and if the evil Instruments in the late Reigns are fit to be our Ministers under this, and what was Male-Administration then Commences just and necessary Politicks now, we shall too certainly and too soon be Miserable; If they don't change Things, you are little the better for changing the Men. The hardships and inequality of Tryals, and the Innovations upon the Rights of Subjects in that particular, made a very Specious Head of the Prince of Orange's Declaration, and it is one of the Articles of our New Original Contract, that the Subject shall be free from such Burthens: But yet our Judges are in the beaten Road of Arbitrary Power, and can do nothing contrary to those *Blessed Presidents*; and tho' it was great and the self-denial of a dying Christian in Mr. Ashton not to name the L. C. Just. P. and Mr. H. for fear of transgressing that Law of Christ of forgiving Enemies, yet it is to be hoped that some Parliament will mark them down to Posterity for Examples sake; I am sure I will with them no punishment, but what may be necessary to keep a Judge, (who ought to be the Prisoners Council) from being an Advocate against him, and a Jury-man from Party and Faction, where Life and Death are concerned. If the Parliament in their last Sessions had seriously thought it worth their while to do any thing, but

give Money, and raise *Quadruple Polls*, if they had really design'd to redress Grievances, and to consider our Constitution, they would have Tack'd the Bill for Tryals in Cases of High-Treason to the first Bill for Money, for by no other Argument then *tacking* are we ever like to get an honest Bill. If the Parliament had done as they ought for the sake of English Liberty, they would have made an exact Inspection into former Tryals, & into those of this Reign, and they would effectually have settled the Methods of Tryals for the future, and I am sure I may say without Aggravation the Tryals of this Reign would have furnish'd them with matter for many Debates; but since the Bill for Tryals, &c. was dropp'd in the House of Lords, because the Prince of Orange solicited against it: and since we can be contented tho' the Prince of Orange refused so small a Concession as the Bill relating to the Judges was, I expect my L. C. J. H. will understand who pays his Salary, and if he does not aggravate against him, may still slip over many things undetermined which should help the Prisoner, (whose Council he should be) if the Court thinks fit to worry him; and I suppose every body that sees Mr. Eliot abroad, tho' they think by the Laws of England he ought to be so, does conclude since he offered Money, perswaded the concealment of the Papers, and express'd his concernment more violently than Mr. Ashton, that the Treason for which Mr. Ashton was Executed was more strongly presumptive against Mr. Eliot, and that it was a hard Case that the Government must be preserved by the murder of a Subject. But I will not enlarge too much against my Lord Chief Justice Poll: *De mortis nil nisi bonum*, shall weigh more with me than it did with the Answerer. And I will end this Paragraph with

with saying that *St. William Whislocks*, and the Earle of *Shrewsbury*'s Names will be dear and honour'd by all after-Ages, for their generous Endeavours to secure mankind from the Barbarous Corruptions of Mercenary Judges, malicious prosecutions, and packt Juries; and it is astonishing that any who pretend to be Patriots could oppose a Bill which desired no more than what the very Attorney-General, in his Conference with the Lords, asserted were by the Common Law the Rights of every *English Man*; tho' as that truly Noble Earle (just now named) well observed they had upon Mr. *Alston*'s Tryal been deny'd by the Court. It had certainly been Nobler to have brought in a Bill to have Recogniz'd the Particulars of that Bill, as our Antient and Undoubted Rights; but the *English men* of this Age are not capable of making generous Reformati<sup>o</sup>ns in Noble *Forms*, I wish they would stick to the *Honesty* of Things, and that those Gentlemen who oppos'd this Bill would against the next Sessions consider whether they are willing that they and their Posterity should answer for the Blood that may be spilt by the Denyal of those Particulars, to which denyal and all the former lewd practices of Courts of Judicature they have given fresh umbrage and countenance. I neither am, nor will by the help of God, be a *Papist*, but I had rather believe all the Absurdities her most violent Antagonists fasten upon the Church of *Rome*, be as *Infidel* as *Turks*, and *Jews*, and *Pagans*, than be guilty of such National Immoralities, than Rob my Country of its Right, or give Opportunity to put Men to Death Illegally.

3. What Mr. *H.* did is thought so much the more strange, because 'tis confidently reported that upon hearing the Papers so charged upon my Lord *Preston*

at his Tryal, he said that Night publicly at the *Grecian Coffee-House* in *Devereux-Court* near the *Middle-Temple*, that if he was not excepted against upon *Monday*, he could not bring in any of the others Guilty, in relation to the Papers; yet he it was that would have help'd them to Evidence, and improv'd one insinuation against Mr. *Alston*, which the Answerer I suppose

had from the same Mint, viz. that one of the Papers was written in Mr. *Alston*'s hand, tho' as the Answerer observes it had been very material to have made proof of that upon his Tryal, which they might easily have done, had it been true, no man's hand being better known, and they having in their hands Volum's of his Writing, when he was in places at Court. Tho' it had been after all for the honour of our Deliverer to have exploded Similitude of Hands, from being Evidence in Cases of High Treason; and unless the Answerer proves the delivery of it to a third Person, he will be thought as much the virulent & unjust Murderer of his Reputation, as the others were of his Body, for want of due Proofs that he knew the Contents. I think a man is Innocent of what he dyes for in the sight of the

The Author did not suppose assert the truth of that Report which related to what Mr. H. said at the *Grecian Coffee-House*, he mention'd what was confidently reported only as a confident Report, and since some of Mr. H. his Friends averr that that Story was false the Author is very sorry he put it in and desires to assure the World that however unjust it may thin Mr. H. was to Mr. *Alston*, the Author would not be unjust (even for Mr. *Alston*'s, & James's, or for the Country's sake) to Mr. H. or anybody else, and farther is infinitely sorry that Mr. H. gave upon this Tryal so many other occasions to think him but a *Brilloll-Stone* while passion and party transform'd him from that exact pursuit of Justice which so long has glorified him amongst his acquaintance the *Rough Diamond*. The Author laments these misfortunes more than having at any time reason to lessen his good opinion of a man he thinks passionately loves England, but every free man's eyes should rather lean towards Mercy; nor is our Country it self to be preserv'd by indirect means of any sort, and much less by any indirect methods in a Tryal where Blood is concern'd.

law, if the Evidence does not amount to Legal Proofs of the Indictment, and what ought in Common Justice, as well as Charity, to be thought the meaning of his asserted Innocency; for he does not pretend that he had not endeavoured to Restore the Uncle, and the Father of him and her that possess the Throne.

4. I don't see in Mr. *Ashton's* Papers so much Art as Honesty, according to his Principles; but I find in the Answerer all the advantage taken that his own Six Weeks labours, and a Club could furnish; from hence a Compliment Mr. *Ashton* makes the Court, fol. 112, and 115. is with him a proof that Mr. *Ashton* had a Copy of the Indictment, Pannel of the Jury, sufficient notice, &c. (which I believe and always did to be necessary to make a Tryal just and equitable, according to the Laws of England,) at least the stress the Answerer lays upon that Compliment, proves that he esteems all the management of that Tryal to have been very fair, and that so *Pol's Brats* in the Charge is language well becoming a Judge, and that *Herbert's* ensnaring Questions are no less becoming an Impartial Jurymen. I omit to mention many other hardships both in Mr. *Ashton's* and my Lord *Preston's* Tryal, but particularly the Kings Council's excepting against so many Jurymen without shewing cause, which is so notorious a prejudice to a Prisoner, that unless they can show very authentick Precedents of the like practice in Criminal Cases, they must give me, and others leave to think it one of the boldest Encroachments upon the Peoples Liberties that our Age has produc'd; and all good men ought to reflect upon the great Violations of their Liberties in this Case, by such unheard of Methods as the Late Tryals give us an account of. The Council for the

Crown in the Tryal of *Croan* excepting against Jurymen without shewing cause, and not being publicly Animadverted upon for so doing, it gave them confidence to do the same thing in my Lord *Preston's* Tryal; and had they had need they would doubtless have ventured to set by men after they had been Sworn to pass upon the Life of the Prisoner; as in *Croan's* Tryal they set by Mr. *Harrison* Goldsmith, Mr. *Parker* Tobaccoist, Mr. *Johnson* Herald-Painter, &c. all men of Wealth and Reputation; a procedure so palpably unjust, that my Lord *Nottm* could not believe it when it was told him.

5. Nor must I neglect to reiterate that unusual way of charging the Jury in these Tryals, the Bench often tells them that if they believe in their Conscience that the Prisoners are Guilty of such and such a thing, they must bring in their verdict, *Guilty*; now the Jury is to have no Belief but what arises plainly and positively from the Evidence brought before them, their Consciences are to be directed by plain proof, that appears so to Them, not be guided by Other mens reasonings: and if their Belief be determin'd any other ways, then from the Evidente before them, all Tryals will be rendred very precarious, and I am very sorry to see our Reformers out-bid in this point, all the Extravagancies of which they so much complain'd. If these things are necessary to support what is done, I will recommend to them the *Scotch Boots*, and all the Inventions of Tyranny in all Countries; But let us not pretend to Jealousie for our Laws, and our Liberties, and encourage the most dangerous outrages against them, and God grant succeeding times may never learn by their Example. God grant that a Judge may never dare to leave a matter of Law, which my Lord C. J. H. must



must acknowledge; as smoothly and as gently Cruel as he was, that Similitude of Hands is to a Jury, not to find matter of Fact, but according to the Evidence produced; and may he grant likewise that it may be scandalous to the last degree in a Jury-man to turn Prosecutor and baffle for Evidence; Had some of the Judges and Jury-men in the Late Reigns been made Examples, we should have found these more tender in This, but perhaps some men were cautious in that, knowing they should have occasion to use the Presidents in this; But I return to what more particularly concerns Mr. *Ashton*, the Man (as *P.* in his Charge calls him) who ought to be honour'd by every party, if they have a sense of bravery in themselves, it is a shame that those that extoll'd the Gallantry of *Sidney* should lessen his Character, by saying, how easie it is for an *English* man to dye; for few Have, or Can dye like Mr. *Ashton*. Let us acknowledge Vertue in our Enemies, and have a Greatness above Sect, above Mode; and above Party; till *English* men come to this, they are not worthy of that Liberty, about which they make such ado. And since there has been such pains taken to depreciate this Gallant man, it is due to his memory to speak something more largely of him; and I would have the Religious of all Perswasions know that I could give Instances of his Piety and Mortification that are Miracles, considering where he was bred, and the Age in which we live; I could remind the Church-Tory that he lived and dyed in their Principles, as far as was consistent with the Liberties of his Country; and tho' he never pass'd under the Character of a Whigg, there are many of them ought, as far as prudence permits, to justifie him, for he was just to Them, and, they know, to his Country;

and whereas some have thought all he did was under prospect of Advancement of his Master's return. I affirm of my own knowledge (and were it fit to set my Name to what I write, without vanity my Word ought to be believed by every set of men, for I have endeavour'd to serve them All, and never justly forfeited thee steem of Any,) I say I affirm he acted the noblest and most dis-interested part in a matter I cannot mention, and which would prove him as much above Flattery as *Jack Ayloff*, and that he could sacrifice his Private to what he thought the Publick advantage. But I will end his Character with saying he could not dissemble with Man even in his Looks, and that he had awful regard towards God. Christianity made him forgive his own personal Enemies, but he could not carelessly base man, or palliate a vile Action. He thought solidly, spoke sensibly and dyed calmly. He was the kindest Husband, most Indulgent Father, and the best of Friends.

6. Thus much for Mr. *Ashton*; I will now pass to the consideration of *passive Obedience*, the Justice of this Cause, and the Legitimacy of the Prince of *Wales*.

The prevaricating Sons of the Church of *England*, have so plainly contradicted by their practices all that they have formerly written, they have been all the *Sherlocks*, that a man had need be well satisfied of his Religion to keep him from *Hobbesism*. Let those that read this Pamphlet, read the Authors quoted in the *History of Passive Obedience*, let them peruse *Tillotson's* Letter to my Lord *Russell* when he was preparing to dye, let them consider impartially what all of them would have had the World believe they Meant at that time, and then if they can, let them forbear abhorring such Practical Atheism.

our Swearing admired Divines. I me them sufficiently for ascribing such sious Authority to Princes, they have pted them to exercise an uncontrollable Rule, and now they as vilely Flatter Mob. The controversy of *Passive* *disobedience* I therefore leave to the Clergy, shall not take upon me to defend all the Crimes they had taught Mr. *Ashton*, but confident they would have been Orthodox with the Church of *England*, had Declaration of *Indulgence* never been out by King *James*; and whatever the swearer saith, pag. 9. and 10. tho' too many prevaricate by Submission, and Obedience, yet there are but few of the us of that Church who submit to the of *Or.* as, or believe him, the Rightful wful King, and so consequently the ject of *Passive Obedience*; those that are that Church in both Houses would have appeared as much against that Alteration the Oath, as they did against *Abjuration*, nay the very Secretary who is of that mmunion (who for his admirable parts s one of the Darlings, and Ornaments at Church,) tho' he has gone greater ngths, then those who are strictly and cerely of that principle can approve of, ould not I believe, be able to stretch his nscience to Swear this an *Elective* Mo- rchy, or the Quarrel Just, or which is ame thing, the Prince of *Orange*. Law- Rightful King.

7. If the Prince of *Orange's* Declarati- had been perused, (which was once by *Ashton* designed to have been Reprint- as a Libel against him, and would have en the Best) if the false steps of the late gns had been rectified, if the Objected oposture, League, and Murder, had en proved; The ill Ministers call'd to account, and the Prerogative fully de- ed, and settled in Parliament (a Re-

formation that would have lookt worth our Hazard, our Fortunes, our Reproach, and our Lives) I say if this had been the effect of the Revolution, it might have tempted a prudent man to sit Quiet: But where are the *Quo Warrinto-Prosecutors*, the Surrenderers of Charters, or the Regu- lators punish'd? Many of them are Wells, and well preferr'd. Is the Parliament House less crouded with Officers? *Danby* is President of the Council, and knows how to manage that matter: are the Elections and Returns better secured? The *Quakers* in the late Elections were not Free- holders in *Berkshire*, *Hartfordshire*, &c. and *Jack How* was a better Church-man than *Powle* who was chosen Speaker at the Con- vention, upon the Corporation Bottom at *Windfor*. Are the Lives, Liberties, and Estates of *English* men better grounded? Unless you think mercenary Foreigners, fitter for that purpose, than such who ha- ving relations amongst us would be, and were, tite to the National Interest. I know nothing we are the better, or wiser in, but in the Methods of *Taxing* the Sub- jects, and Guilding the Pill with popular Names, Enacting *Martial Law*, suspension of the *Habeas Corpus*, &c. while those ve- ry persons who had taught us, that the King could not be call'd to an account by his Subjects, and both swore themselves, and obliged others to swear, that it was not Lawful upon any pretence whatsoever to take up Arms against him, engaged both themselves, and others, to help the *Pr.* of *Or.* to Dethrone his Uncle, and his Prin- cess's Father, the Lord's Anointed, and their own Lawful, and Rightful Sovereign. The Prince's Declaration, and the Memorial of the States, deny'd that this was the Design, but *St. Asaph* has found it in the Revelations.

8. Now give me leave to Examine the *Justice* of this Engagement, the Answerer plainly points out that it was to stop the Encrease of the *French Monarchy*. But this will not go down till the *French League* is proved, the contrary of which was most true; Inſomuch that tho' *D'Avaux* had got the ſecret of this Invaſion, and the King of *France* preſs'd King *James* to take care, yet he was Jealouſe it was Art in the *French King* to dip him in his quarrel, and could not believe the Pr. of Or. would undertake what he thought ſo horrid and unnatural. So that *Van Cyters* his falſe Proteſtations had more credit then the true Informations of *Barrillon*: and ſome will think 'twas not impoſſible for that Parliament which King *James* was calling, to have perſwaded him to have taken a Juſt care of *Europe*. I am far from commend- ing the Way they were to be choſen in, perhaps I am as Nice as any man living of the Priviledges of *English* men; but I believe the Men that were recommended to the Corporations, were many of them choſen into the Convention, and ſome of them perhaps were but too hot Members there; Nor do I believe they would have been Mealy-mouth'd under King *James*. So that the Emiſſaries of the Pr. of Or. might have perſwaded them to have talked loudly of the growth of *France*, and of the growth of *Popery*, without all that Ex- pence of Blood and Treafure we have been at, and God knows when it will be at an End, or our Trade return. Tho' if he came to ſave the People of *England*, he ſhould have made Us the Better for his pre- ferment, & our Redemption; but conſider- ing the natural Obligations he had to King *James*, he ſhould not only have made Him the Worſe, nor ſhould he have Eſtabliſh'd his Uſurpation by the moſt rigorous and Illegal Proceedings againſt thoſe that had

been the *Menial* Servants of the King; Mr. *Aſhton* had many years. King *James* thought the Secondary Loyalty that *Scots* ought to have towards their Maſter was ſo much an Excuse even for their Re- bellion againſt him, that after the De- feat of *Monmouth's* Defeat, *Jeffryes* himſelf could not prevail with him to ſuffer any one to be deſtroyed that ſo depended upon that unfortunate Perſon.

9. But to return to the *Invading* Pol- ticks; The *Dutch* Ambaſſador ought not to have been ordred to deny thoſe prepa- rations were againſt King *James*, and it was fit to have try'd whether things might not have been amicably ſet right by Treaty, before they entred into Conſpiracies and Clandefſtine Confederacies; with the *Pope*, the *Emperor*, and *Spaniſh King* (with the aſſiſtance of the *Inquiſition*) to Eſta- bliſh the true Proteſtant Religion. Nor ſhould *Dickvelt* have come hither to cor- rupt, and Liſt the King's Subjects againſt him. Thoſe that can find Preſidents and Arguments for theſe things, can reverſe Nature and all her Laws, can put off the ſence of a God, and a World to come, whiſt they baſely lend their Pens to ap- plaud the blackeſt Methods to proſper Vi- lany in this; They may declaim for *Luci- fer*, and commend the aſpiring minds of the fallen Angels, who have obtained a Government and Superintendency over perjured and wretched Souls; over the baſe, the treacherous, and the ungrateful, and this Man Reigns in the Hearts of none elſe; and that Church-Divine that can make the Meſſage by the three Noble Lords, a very good natur'd Compliment, may go a great way towards proving the Regicides Noble, and Conſcientious Patriots. I think in my Conſcience by his Wordings that Paragraph (which I had almoſt ſlip over,) he would have been willing the Life of his Sovereign ſhould

should have been taken away, to put an end to the War, and the Charge; he might have had arguments from the Army Remoustrants, 1648. and with Dr. *Star's* help, and from his Text have prov'd it the *Lord's doing*; a man would think he had been in *Holland* that he allows all things to be done for *Interest*, and the most unnatural Barbarity to be good Breeding, if it does the business; He lets loose all the Ambition imaginable in Princes against all the sacred ties of Natural and Civil Relation, against their Uncles, their Neighbours, their Allies, their Friends, and their Father-in-Law; And sets down the wisest Maxims that were ever advanc'd in Politics, and thinks to cast upon the Doctrines of the Church of *England*, every Art of State wherein Princes have consulted their own secular advantages, & got a willing Clergy, or perhaps but One of that Robe, to countenance what yet was not so apparently opposite to the sense of all good men, as our Pretences are.

For my part, this Answerer shall no more send me to the *French* Cabinet, then the *Netherlands*, to be instructed in honesty. And I know no body that would have blamed the *Pr. of Or.* for obstructing the *French* Designs, if he had not taken an Unjust way to do it. I wish he could have resettled the *Edict of Nantz*, and the *Assembly of the States* there;

the Liberties of the oppress'd and Liberty of Conscience all over the World; but I am sure he has chosen rather to be what after-Ages will call a Pirate, and a Robber, then to be the acknowledg'd Benefactor and Protector of mankind; he has had great opportunities, but he has shewn he knows not how to use them, he has not a Soul large enough for the Post in which this fickle Nation has put him. A poultry Self-Interest governs his Councils, and as ill men govern him, and make him mistake his Way to Glory; There were too apparent prints of this Self-Interest in that part of his Declaration quoted by this Answerer in relation to the Prince of *Wales*, and since that is anew insisted on by this Licensed Author, (tho' the Convention and present Parliament Wisely let it alone, because many of the Members always knew there would be produced Unanswerable and Undoubted proofs, I will promise them they shall hear of it with a witness in a particular discourse, since it would draw this Paper to too great a length. I will conclude after I have solemnly return'd my Thanks to the Government, for at last publishing Mr. *Ashton's* Speech, tho' not without the best Answer they could make to it, which yet scarce ever was bought, but to make the Speech in a Closet no Crime.

## A POSTSCRIPT.

THE Author when he first published the former Vindication of the Dead, intended, as he promised in his *Postscript*, to have written a Paper expressly to have prov'd the Legitimacy of the Prince of *Wales*, and to have Answer'd all the Objections of those malicious people who had suggested he was Fictitious, but some of the King's Friends having Industrious found out who was the Author, overpersuaded him not to write upon that Subject, not for want of Materials, but because it was not fit to write upon so important a Matter till mankind was come to a more Impartial temper, but now their Majesties have beyond contradiction writ the Vindication of his Legitimacy, or rather God has been pleas'd to write it, by having blessed their Majesties with apparent promises of another Child in a few Months, nor can the artificial bringing in a Bill which makes it death to go into *France*, Rattle the Queen's great Belly; for their can scarce be a better proof that the Promoters of that Bill believed the Reality of it; because upon all other Accounts such an Act would have been as necessary heretofore, as it is now; but my Lord *Newport* and my Lord *Nottingham*, &c. too well knew what would be the Consequence, in this Case of letting it remain.

less Crime than High-Treason to go into *France*. They were not so much afraid that the King of *France* should be inform'd of the state of our Affairs, for that every Body knows they have from *Holland*, but they justly fear'd that Conscientious People might by those who out of Curiosity, or Respect, went to *France* be inform'd how gross an Imposture they had put upon the World, by saying the Prince of *Wales* was an Imposture. But to carry that point farther in Answer to this Answerer, had the Prince of *Orange* thought himso, I can't nevertheless yield myself as much satisfied as that Answerer seems to be that the Prince of *Orange* might upon a Suspicion that King *James* intended to defraud him of a Remote Right, Invade and Dethrone him, even tho' he had not been so Nearly related to him; I never knew that because I might Lawfully sue for and recover what another was about to cheat me of, I might not only get Justice against my Adversary therein, but Cheat him too of all that he rightfully has besides. Yet this is the *New Light* of this Revolution, the discovery of the Answerer, and the Doctrine by which he justifies the Invasion of the Prince of *Orange*.